

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 9726 of 2006

Date of decision 8 .5.2007

Ujinder Singh .. petitioner

Versus

State of Punjab and others .. Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE RAJESH BINDAL

PRESENT: Mr.RK Arora, Advocate for the petitioner

Mr. MP Goswami, DAG Punjab for respondent nos. 1 to 3

Mr. A.K.Khunger, Advocate for respondent no.5.

M.M.Kumar, J.

This petition filed under Article 226 of the Constitution prays for issuance of direction to the respondents for declaring their action in reducing the pay of the petitioner with effect from 11.12. 1989 on the basis of audit objections as illegal. The audit objections read as under:

“ Sh. Ujinder Singh son of Sh. Manohar Singh, Pump Driver.

Sh. Ujinder Singh was appointed as Pump Driver vide this office order no.47 dated 11.12.1980. The employee had joined his duties on 11.12.1980. The employee is possessing the qualification of matriculation. He is not possessing the qualification of ITI in any trade. His pay has been wrongly fixed under Chapter 26 and he has been paid the arrears of Rs.1,12,663/- vide voucher no.40 of 12/02. The

employee was drawing the following pay before the implementation of Chapter 26 in his favour.

<u>Date</u>	<u>Basic pay</u>	<u>Special Remarks</u>
11.12.80	400	(400-600)
1.12.81	410	
1.12.82	420	
1.12.83	430	
1.12.84	440	
1.12.85	450	
1.12.86	465	
1.12.87	480	
1.12.88	495	
1.1.86	1050	(950-1800)
1.1.87	1075	
1.1.88	1100	
1.12.88	1125-	8 years Prof. Step up.
1.1.89	1150	
1.1.90	1175	
1.1.91	1200	
1.1.92	1230	
31.12.92	1200 +30	
1.1.93	1240 + 30	
1.1.94	1280+30	
1.1.95	1320 +30	
1.1.96	4400	
11.12.96	4550 - 16 years prof.	Step up.
1.1.97	4700	
1.1.98	4850	
1.1.99	5000	
1.1.2000	5160	
1.1.2001	5320	
1.1.2002	5480	

The Nagar Council, Nabha had granted the benefit to this employee under Chapter 26 in the following manner :-

<u>Date</u>	<u>Basic pay</u>	<u>Special Remarks</u>
11.12.88	1350	(1350-2400)
1.1.89	1380	
1.1.90	1410	
1.1.91	1440	
1.1.92	1470	
1.1.93	1500	
1.1.94	1550	
1.1.95	1600	
1.1.96	5000	
11.12.96	5160	8 years prof. Step up.
1.1.97	5320	

1.1.98	5480
1.1.99	5640
1.1.2000	5800
1.1.2001	6000
1.1.2002	6200
1.1.2003	6400”

It is appropriate to mention that the petitioner alongwith some other employees working with respondent no. 5- Municipal Council, Nabha had earlier filed CWP No. 7032 of 2002 seeking a direction for implementation of the recommendations made by the 3rd Pay Commission in Chapter 26 of its Report concerning grant of revised pay scales to the skilled and semi skilled employees as had been granted to the employees of the Municipal Corporation, Jalandhar who had filed CWP No. 5177 of 1999 (Satpal and others v.. State of Punjab). A Division Bench of this Court on 6.5.2002 disposed of the writ petition with the observation that the petitioners were to make a representation to the Government to issue similar directions to the Municipal Council, Nabha as was done in the case of employees of the Municipal Corporation, Jalandhar. A copy of the order passed by the Division Bench has been placed on record as Annexure P.2. The Municipal Council, Nabha passed a resolution No. 84 dated 27.7.2002 whereby the petitioner alongwith similar employees were allowed the benefit of revised pay scale as per instructions dated 16.9.2002, which were made effective from 7.1.1986/ date of option, issued by the Government and entry to this effect was made in the service book of the petitioner. Accordingly, the petitioner started drawing the revised pay scale w.e.f. 1.1.1986. However, on the basis of audit objection raised it was opined that the petitioner although possesses the qualification of matriculation but has not passed ITI in any trade. It was, therefore held that he was not entitled to the benefit of higher pay scale as per the recommendations made by the 3rd

Pay Commission in Chapter 26 of its report.

The stand of the respondent no.5 in the written statement is that the petitioner was not entitled to fixation of his pay in the higher pay scale on account of lack of qualification of having passed ITI. Therefore, he cannot be considered as a technical hand.

Mr. R.K.Arora, learned counsel for the petitioner has submitted that he does not wish to challenge the action of the respondents in reducing the pay of the petitioner. He has submitted that he would confine his prayer to the proposed recovery which is sought to be made from the petitioner as the same would be unlawful in view of the ratio of the judgement of the Hon'ble the Supreme Court in the case of Sahib Ram v. State of Haryana 1995(1) SCT 668. According to the learned counsel, the petitioner has not committed any fraud or made any mis-representation to claim the higher pay scale.

However, learned counsel for the respondents have argued that once it is accepted that payment of excess amount has been made to the petitioner then the natural consequence of recovery must follow. According to them, such a course would be available by permitting the respondents to recover the amount by way of easy instalments.

After hearing the learned counsel for the parties, we are of the considered view that this petition deserves to be allowed in view of the judgment in the case of Sahib Ram's case (supra) where Hon'ble the Supreme Court has categorically laid down that no recovery could be effected from an employee in the absence of misrepresentation or fraud on his part.

In view of the above, the writ petition is partially allowed and

action of the respondent no.5, Municipal Council, Nabha in effecting recovery from the petitioner is hereby set aside. If any recovery has been effected from the petitioner the same shall be repaid to him within a period of two months from the date of receipt of certified copy of this order.

(M.M.Kumar)
Judge

(Rajesh Bindal)
Judge

8.5.2007
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